



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **22.03.2018**

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
Crl.R.C. (MD) No.171 of 2018

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Muniyammal

: Petitioner

-Vs.-

1. M/s.Aswin Cotton,
represented by its Managing Partner,
S.Sumithra
2. S.Sumithra
3. S.Yuvarani
4. V.Amutha
5. S.Lakshmi

: Respondents / Accused

Prayer: Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.1, Karur in C.C.No.548 of 2007 dated 18.09.2009 to direct the learned Judicial Magistrate No.1, Karur to restore the case on file.

For Petitioner : Mr.S.Gokul Raj
For Respondents : No appearance

O R D E R

For the sake of convenience, the parties will be referred to by their name.

2. Balasubramani initiated a prosecution in C.C.No.548 of 2007 before the learned Judicial Magistrate No.I, Karur, under Section 138 of the Negotiable Instruments Act, 1881, against the accused. During the pendency of the prosecution, Balasubramani died on 24.04.2008. The trial Court waited till September 2009 and ultimately, passed the following order on 18.09.2009.

"18.09.2009 - All accused present.
Complainant side no representation. No
steps taken for substitution for
complainant. In spite of sufficient chance
given. Hence this complainant is dismissed
for default."

3. Challenging the order dated 18.09.2009, Muniyammal, the mother of the complainant, has filed the present Criminal Revision case with a delay of 42 days. Therefore, Muniyammal has filed M.P. (MD)No.1 of 2010 in Crl.R.C.No.SR3904 of 2010 under Section 5 of the Limitation Act for condonation of delay.

<https://hcservices.ecourts.gov.in/hcservices/>

4. This Court has condoned the delay today.



5. The learned counsel appearing for Muniyammal submitted that as the legal heir of the deceased Balasubramani, she must have been permitted to get herself substituted. Instead of filing substitution petition, the learned counsel has filed a mere memo dated 01.12.2008, which reads as follows:

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"It's humbly submitted that the above named complainant died on 24.04.2008 leaving behind him, his mother and father as legal representatives to succeed his states. As the legal representatives of the complainant are also well aware of the transaction had by the accused with the complainant they may be substituted as complainant. To that effect this memo filed same may be recorded."

6. In this memo also, it is not stated who is going to get substituted into the shoes of the deceased Balasubramani. This memo was filed on 01.12.2008 and the learned Judicial Magistrate No.I, Karur, waited till 18.09.2009 and only thereafter, he has dismissed the private complaint. It should be borne in mind that the accused has also got a right under Article 21 of the constitution of India for expeditious and speedy trial.

7. In such view of the matter, this Court does not find any infirmity in the order passed by the trial Court, warranting interference by this Court. Accordingly, this Criminal Revision Case is dismissed with liberty to the petitioner to work out her remedy in the manner known to law.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.1, Karur.

+1cc to Mr.R.Vijaya Kumar, Advocate Sr.No.57374

SM

VB/SKN/RSK/SAR4/17/04/2018/2P/3C